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08/02/2004 12:14 PM

SDMS Document ID



2001373

To Leon Szeptycki <LSzeptycki@tu.org>,  
jbaker@snowbird.com  
cc Alan Matheson <AMatheson@tu.org>, Laura Hewitt  
<LHewitt@tu.org>, Carol Russell/EPR/R8/USEPA/US@EPA

bcc

Subject

Leon, Alan, and Laura,  
I spoke at some length with Carol Russell, EPA's Region 8 Mining Team Leader, today about our concerns with future liability at not only the AFC mine reclamation project but the many other sites that may receive attention under the Settled, Mined, and Left Behind program. I asked her specifically about "Administrative Orders on Consent". As I suspected such an order is issued under CERCLA authority. As such, other State and Federal permits are preempted and an organization conducting such an action is only required to look at them substantively and attempt to fulfill their intent but is not required to actually obtain the permits. That was my experience with the FS project we did in AFC under CERCLA. We assembled the ARAR's (Applicable Regulations and Requirements or some such name) and looked at the meat of those requirements and did our best to incorporate them into the design of the project. But we did not get any other permits.

I asked Carol if we did pursue an Administrative Order on Consent if she recommended that we also work through the Voluntary Cleanup Program. She responded that we could but it would not be necessary. She suggested that we try to get the State of Utah to sign off on the Administrative Order along with EPA, thus showing our intent to abide by State requirements without actually applying for them. That way we could maintain good relationships with Utah without playing the permit game.

I remember in our discussions with Mr. Christiansen the possibility of using the VCP and getting an Administrative Order from EPA. We could still go that way but it does not appear necessary to do both. Carol is working with her legal staff this week to formulate a response to our liability letter. Officially EPA cannot ensure exemption from future liability if we do our project under the VCP unless the MOU between the State and EPA is in place. In our conference call with Mr. C we talked about the unlikelyhood that EPA would ever come back against TU as a Potentially Responsible Party if we did this work under the VCP for future actions at Pacific Mine and we came to the position that we would be best served if we also had the Admin Order from EPA. Carol provided me with a copy of an Administrative Agreement on Consent for Removal Action that she thought we could use as a model for our purposes in AFC. The order was negotiated with ASARCO by Holly Fliniaux, formerly with EPA now with USDA and an associate I worked closely with in AFC. The document is 13 pages long including attachments and it was Faxed to me. I can mail it or Fax it to you if you are interested. Let me know if you want a copy of this. I have Laura and Alan's address and Fax but Leon I'm afraid I have misplaced yours.

If after further consideration we decide to follow the Admin Order avenue we would sit down with EPA and negotiate the terms for our project, I'm thinking in their office in Denver. Snowbird's people would probably be in attendance to decide whether they wanted to be a signator to the Order along with TU and to make sure they were in agreement with the terms of the Order. With a model to follow I would hope it would not take to long - so we could be ready to implement our project in 2005. There are no fees for this approach where the VCP does carry a \$2000 filing fee and potential for additional assessments for oversight costs.

I'll provide copies as you wish.

Ted

ps. Carol is hopeful of having a response to our liability letter by the end of the week.